Supreme Court, U.S.
FILED

No. 011412 MAR 19 2005

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In The Supreme Court of the United States

In Re: Samuel Bunyan Davis, Jr.

SAMUEL BUNYAN DAVIS, JR.,

Petitioner,

v.

ESTATE OF GLADYS LOUISE BARCLAY,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

Samuel B. Davis, Jr.
Pro Se Petitioner
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Newport News, Virginia 23606
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268P

QUESTIONS PRESENTED

1. Whether the Commonwealth of Virginia's system of recalling retired judges violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States

2. Whether Petitioner is a member of a group of persons treated differently and therefore entitled to protection under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States

PARTIES TO THE PROCEEDING

PETITIONER

Samuel Bunyan Davis, Jr.

RESPONDENT

Estate of Gladys Louise Barclay
Successor in interest to Louise Barclay Davis

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TABLE OF AUTHORITIES

Constitution of the United States,
Amendment 14 3

Code of Virginia
Section 17.1-105 3

JURISDICTION

This case comes to the Supreme Court of the United States as a petition for a writ of certiorari on a final order of the Supreme Court of Virginia entered on February 12, 2002 in a divorce matter (Exhibit No. 1),

A final decree of divorce was entered by the Circuit Court of the City of Newport News on April 10, 1997. A Motion for Reinstatement on the docket of the court was filed on May 29, 2001. On the afternoon of July 18, 2001 Petitioner received in his mail a letter dated July 15, 2001 from Rex A. Davis, Clerk of the Circuit Court of the City of Newport News stating that the Supreme Court of Virginia had on July 12, 2001 designated retired Judge James C. Godwin to hear the case in place of all five judges of the circuit who had recused themselves (Exhibit No. 2). On October 8, 2001 Petitioner filed for a Writ of Prohibition with the Supreme Court of Virginia (Exhibit No. 3). It is from the order denying the writ that this petition is made.

STATEMENT OF THE CASE

This is a divorce case in which there are two incontrovertible facts:

1. The Bill of Complaint was filed in the Circuit Court for the City of Newport News on July 25, 1995, and

2. There was no service of process by personal, posting or publication until May 7, 1996.

And yet, during that time Judge Robert P. Frank held a hearing and entered an order, a five unit police raid was staged to enforce that order forcing Petitioner to flee the marital residence and the Supreme Court of Virginia appointed retired Judge James C. Godwin substitute. The service of process on May 7, 1996 was by posting; retired Judge Designate Godwin ruled that a video-tape of Petitioner removing it from the door was personal service. Petitioner, a lawyer admitted to the Virginia bar on February 2, 1952 boycotted the proceedings, knowing he had not been personally served.

A final decree of divorce was entered on April 10, 1997. Appeals were filed and have continued since that time. A Memorandum of *Lis Pendens* was filed. Petitioner's wife died on November 14, 1997. Despite the *Lis Pendens* the marital residence was sold, demolished, used as backfill for a bulkhead built along Fisher Creek and the James River, and replaced by a dwelling assessed on the Newport News tax rolls at $409,400. The appeals have been defended by Petitioner's wife's estate which also has moved agressively to acquire properties of Petitioner and particularly Virginia Real Estate Trust.

On September 10, 1998 Petitioner was admitted to Riverside Hospital near death after lying unconscious on his bedroom floor for five days. On September 18, 1998 at 5:05 p.m. in Room 439 Petitioner was served with a notice of motion for relief thirty minutes after being moved from the Intensive Care Unit (Exhibit No. 4). This motion sought confirmation of sales contracts of two parcels of real property titled "S. B. Davis, Jr. and Louise B. Davis, Trustees of Virginia Real Estate Trust" and "Virginia Real Estate Trust" respectively and the payoff of a mortgage

loan of Myrtle Gwaltney. Petitioner moved for a continuance based on his hospitalization. This was refused, Judge Designate Godwin writing across the bottom "No appearance No Drs certificate nothing to cause continuance other than mere allegation" (Exhibit No. 5).

On May 29, 2001 Petitioner filed a Motion for Reinstatement of this case on the docket of the Circuit Court of the City of Newport News. On July 12, 2001 the Supreme Court of Virginia designated retired Judge James C. Godwin to hear the case. Judge Godwin promptly reinstated the case upon the docket. Petitioner filed an application for a writ of probibition with the Supreme Court of Virginia (Exhibit No. 3). The Attorney General of Virginia filed a demurrer on behalf of Judge Godwin, answered by Petitioner's memorandum of law (Exhibit No. 6). It is from the Virginia Supreme Court's denial (Exhibit No. 1) of the writ of prohibition that this petition for a writ of certiorari is made.

REASONS FOR GRANTING THE PETITION

Petitioner avers that the Virginia practice of using retired judges violates his rights guaranteed by the final clause of the Fourteenth Amendment to the Constitution of the United States which states:

> "...; nor deny to any person
> within its jurisdiction the equal
> protection of its laws."

The applicable part of Code of Virginia Section 17.1-105 permitting the use of retired judges states:

17.1-105. Designation of judges to hold

courts and assist other judges.

> B. If all the judges of any court of record are so situated in respect to any case, civil or criminal, pending in their court as to render it improper, in their opinion, for them to preside at the trial, unless the cause or proceeding is removed, as provided by law, they shall enter the fact of record and the clerk of the court shall at once certify the same to the Chief Justice of the Supreme Court who shall designate a judge of some other court of record or a retired judge of any such court to preside at the trial of such case.

In Virginia circuit judges are appointed by the General Assembly for a term of eight years. They are subject to the supervision of the Supreme Court of Virginia which has the ultimate authority to force retirement or removal from office. They are also subject to a form of supervision by the right of the General Assembly to decline to reappoint them at the expiration of their term. Retired judges require no further action by the General Assembly to continue to hear cases when designated by the Chief Justice. Their retirement benefits cannot be stopped or altered. It is to be noted that a judge forced to retire because of a complaint could still hear cases if designated by the Chief Justice.

In Virginia a lawyer may not return to the private practice of law after having been elected by the legislature as a judge. To remedy this the General Assembly has made the benefits under the Judicial Retirement System the most generous in the nation. A judge receives two and one-half (formerly three and one-half) months credit toward retirement for every month served. If age 55, a judge may

retire with as little as 24 months actual time on the bench. The amount of benefits, however, depends on length of service and best salary for 36 continuous months. To get the maximum of 78 percent of salary a judge must serve 18 (old judges 13) years. Thus a judge has a strong financial interest in being reappointed. A retired judge has no such incentive; his retirement is vested and cannot be changed. It is this difference in oversight that Petitioner claims deprives him of equal protection of the laws.

The Federal system of appointing district and appellate judges for life is predicated upon giving them the authority to make decisions free from public or political pressure. Magistrate Judges are appointed for a term. Consent must be granted by both parties before they have jurisdiction to hear cases. The same rule should apply to Virginia courts. Not only should consent be required for a retired judge to hear a case, but consent should be required for the particular judge selected by the Chief Justice.

Because the question was raised before the Supreme Court of Virginia in the instant case, it is necessary to examine the application of the Fourteenth Amendment to the Constitution of the United States. In his memorandum of law to the court below, the Attorney General of Virginia states "A provision of law violates equal protection when it impermissibly affects one group of citizens differently from another".

The system of using retired judges, while designed for the laudable public purpose of providing speedy trials and relieving overworked judges, it provides the vehicle for discrimination in high profile cases. Petitioner claims that he is member of a class - lawyers - that are discriminated against. When lawyers are litigants in civil cases, or defendants in criminal cases, judges in his/her circuit

universally recuse themselves. A situation unique to lawyers is the disciplinary system of the Virginia State Bar. When a complaint is filed against a lawyer, he/she may elect to have the matter heard by a three judge court instead of the district committee. If heard by the district committee the decision may be appealed to a three judge court. This court is universally staffed by retired judges, While ostensibly designed to free judges from passing judgment on lawyers who may appear before them in the future, it gives a lawyer judges who have an unequal constraint on their decisions.

CONCLUSION

Petitioner asks this Court to declare Section 17.1-105 of the Code of Virginia unconstitutional and remand the Application for a Writ of Prohibition to the Supreme Court of Virginia with instructions to grant said writ.

Respectfully submitted,

Samuel B. Davis, Jr.
Pro Se Petitioner
437 Winterhaven Drive
Newport News, Virginia 23606
(757) 930-8733

APPENDIX

Exhibit No. 1	Va Sup Ct Order denying writ	1
Exhibit No. 2	Va Sup Ct Order app Godwin	2
Exhibit No. 3	App for Writ of Prohibition	3
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VIRGINIA

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on **Tuesday the 12th** *day of* **February, 2002.**

In Re: Samuel Bunyan Davis, Jr., Petitioner

Record No. 012239

Upon a Petition for a Writ of Prohibition

On consideration of this case, the Court is of the opinion that the writ of prohibition should not issue as prayed for. It is therefore ordered that the said petition be dismissed, the rule be discharged and that the respondent recover of the petitioner his costs by him expended about his defense herein.

A Copy,
Teste:
David B. Beach, Clerk
By: /s/ Wendy L. Tuck
Deputy Clerk

Respondent's costs:
Attorney's fee $50.00
Teste:
Davis B. Beach, Clerk
By: /s/ Wendy L. Tuck
Deputy Clerk

Exhibit No. 1

Supreme Court of Virginia

To All To Whom These Presents Shall Come - Greetings:

Know Ye, That I, Harry L. Carrico

Justice of the Supreme Court of Virginia, by virtue of the authority vested in me by law, do hereby designate

HONORABLE JAMES C. GODWIN, RETIRED JUDGE OF THE FIFTH JUDICIAL CIRCUIT TO PRESIDE IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

In the case of
Louise Barclay Davis
v.
Samuel Bunyan Davis, Jr.
Chancery Number 27095

To be heard on a date set by the Judge, and continuing until the matters presented to him in this case have been disposed of according to law.

In the place of
THE JUDGES OF THE SEVENTH JUDICIAL CIRCUIT
who are so situated as to render it improper, in their opinion for them to preside at the trial of said case.

Given under my hand and seal this 12th day of July @001.

Harry L. Carrico
Chief Justice of the Supreme Court of Virginia

Exhibit No. 2

IN THE SUPREME COURT OF VIRGINIA

In re: SAMUEL BUNYAN DAVIS, JR.

Petitioner in a suit styled:

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS

LOUISE BARCLAY DAVIS,
and the Estate of Gladys Louise Barclay, successor in interest,

Plaintiff,

v. CHANCERY NO. 27095

SAMUEL BUNYAN DAVIS, JR.,

Defendant.

APPLICATION FOR WRIT OF PROHIBITION

Now comes the Petitioner, Samuel Bunyan Davis, Jr. pro se upon his oath and moves the Supreme Court of Virginia for a Writ of Prohibition directed to the Honorable James C. Godwin, prohibiting him from presiding over the above styled suit and says as follows:

1. That he is a retired Circuit Judge of the Fifth Judicial Circuit of Virginia.

Exhibit No. 3

2. That as a retired judge he is not subject to reappointment by the General Assembly of Virginia.

3. That as a retired judge he holds no office and is therefore not subject to removal or impeachment.

4. That presiding over a case by a retired judge not subject to reappointment or removal as are other judges violates defendant's right to equal protection of the law under the Fourteenth Amendment to the Constitution of the United States.

MEMORANDUM OF LAW

The sole law in this matter is the Fourteenth Amendment to the Constitution of the United States which states:

> ...; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

WHEREFORE this defendant prays that a Writ of Prohibition be issued against the Honorable James C. Godwin.

Respectfully submitted,

Samuel Bunyan Davis, Jr.

Samuel Bunyan Davis, Jr. pro se
437 Winterhaven Drive

Newport News, Virginia 23606
(757) 930-8733

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of October, 2001 I deposited a copy of the foregoing Application in the U. S. Mail to Kenneth B. Murov, 690 J. Clyde Morris Boulevard, Suite D, Newport News, Virginia, 23601.

_____
Samuel Bunyan Davis, Jr.

STATE OF VIRGINIA

I hereby certify that on the _____ day of October, 2001 personnally appeared before me, _____ Notary Public by Samuel Bunyan Davis, Jr., who being first duly sworn stated that all information in the foregoing Application is true and accurate to the best of his knowledge and belief.

_____
Notary Public

My commission expires _____

Office of Discreet Inquiry
1328 East Pembroke Avenue
Hampton, Virginia 23669
Business License 11-1722

MPI

PROOF OF SERVICE

STYLE. Davis v Davis . CASE #. 27095 .
VIRGINIA:IN THE CIRCUIT COURT FOR THE
CITY OF NEWPORT NEWS
SERVED: SAMUEL BUNYAN DAVIS, JR.
437 WINTERHAVEN DRIVE
NEWPORT NEWS, VA 23606

is the name and address of the person upon whom service of the following is to be made

( ) Notice of Motion for Judgment and
Motion for Judgment
( ) Subpoena in Chancery and
Bill of Complaint
( ) .Notice and Motion for Relief .

I am a private process server. I am over the age of eighteen years and not a party to or otherwise interested in the subject matter in controversy in this case. I served, as shown below, the above-named person upon whom services of process was to be made with copies described above.

Exhibit No. 4

Date and time of service. 18 Sept 1998 5:05 pm .
Place of service. Riverside Hosp Rm# 439
Newport News, Va.
Method of service. xxx . Other. _____.

. 21 Sept 1998 . . Ned Massey III .
Date Signature Ned Massey III

NOTARY

Name (Type or Print). Stephanie M. Cain .
State of Virginia City County of. Hampton .
Subscribed and sworn to affirmed bdfore me
this date by. Ned Massey III .

. 21 Sept 1998 . . Stephanie M. Cain .
Date Signature Stephanie M. Cain
My commission expires. 31 Jan 2002 .

VIRGINIA: IN THE CIRCUIT COURT
FOR THE CITY OF NEWPORT NEWS

LOUISE BARCLAY DAVIS,
and the Estate of Gladys Louise Barclay,
successor in interest

Plaintiff

v. IN CHANCERY
NO.27095

SAMUEL BUNYAN DAVIS, JR.
Defendant

MOTION TO QUASH MOTION FOR RELIEF

NOW COMES, Samuel Bunyan Davis, Jr. and moves the court to Quash the Motion for Relief for the following reasons:

1. That the matters contained in the Motion are on appeal to the United States Supreme Court.
2. Patricia W. Fromal has recently, October 2, 1998 been appointed Co-trustee of Virginia Real Estate Trust and request time to become acquainted with the nature of the action and acquire representation.
2. All matters pertaining to Samuel Bunyan Davis, Jr. should be continued until Samuel Bunyan Davis, Jr. Is released from doctors care. Whereby Samuel Bunyan Davis, Jr. Is undergoing recovery from surgery, pneumonia and currently hospitalized.

Filed
10/5/97
No appearance . Samuel Bunyan Davis, Jr. .
no Drs certificate Samuel Bunyan Davis, Jr.
nothing to cause continuance
other than mere allegation

Exhibit No. 5

IN THE SUPREME COURT OF VIRGINIA

Record No. 012239

IN RE:

Samuel Bunyan Davis, Jr.

Petitioner.

MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENT'S DEMURRER AND MOTION TO DISMISS

The Petitioner, Samuel Bunyan Davis, Jr. pro se submits the following Memorandum of Law in opposition to the demurrer and motion to dismiss his petition for writ of prohibition.

I. STATEMENT OF THE CASE AND FACTS

This case comes to the Supreme Court of Virginia upon a petition for writ of prohibition in a reinstated divorce case styled Louise Barclay Davis vs. Samuel Bunyan Davis, Jr. in the Circuit Court for the City of Newport News, Chancery No. 27095-RW. Louise Barclay Davis is deceased. On May 29, 2001 Petitioner filed a motion for reinstatement with the five judges of the Seventh Judicial Circuit of Virginia *en banc*

Exhibit No. 6

requesting reinstatement for examination of fraud upon the court in the entry of the final decree and appropriate remedy. On July 18, 2001 Petitioner received notice from Clerk of Court Rex A. Davis that retired Judge James C. Godwin had again been designated to preside. On July 21, 2001 Petitioner wrote to Chief Justice Harry L. Carrico (Exhibit No. 1). On July 28, 2001 Petitioner received an order of reinstatement dated July 19, 2001 (Exhibit No. 2). On October 8, 2001 Petitioner deposited in the USPS Regional Mail Facility in Norfolk his petition for writ of prohibition to the Clerk of this Court.

II. QUESTIONS PRESENTED

A. WHETHER PETITIONER IS A MEMBER OF A GROUP OF PERSONS TREATED DIFFERENTLY AND THEREFORE ENTITLED TO PROTECTION UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

B. WHETHER THE COMMONWEALTH'S SYSTEM OF RECALLING RETIRED JUDGES VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

III. PRINCIPLES OF LAW, ARGUMENT AND AUTHORITIES

A. In his memorandum the Attorney General states "A provision of law violates equal protection when it impermissibly affects one group of citizens differently from another". The Supreme Court of Virginia by its' selective use of retired judges creates classes that are discriminated against. In Petitioner's case the class is

lawyers. Under the disciplinary system of the Virginia State Bar a lawyer may appeal a decision of his district committee to a three judge court. This court is universally staffed by retired judges.

When citizens file suit against public officials both for removal from office and monetary damages the local judges routinely recuse themselves. A retired judge is universally designated. These citizens are denied equal protection of the law.

A third example will *redutio ad adsurdsum*. To Petitioner's knowledge no retired judge has ever been called upon to preside in a capital murder case. This creates a class of citizens - Non-Murderers - that are discriminated against. This class may evoke chuckles but the logic is sound to illustrate that a class may always be found when there is a systemic imposition of injustice.

B. A retired judge is subject to oversight only by the Supreme Court of Virginia. An active judge is subject to oversight by the Supreme Court but is subject to the additional oversight by the General Assembly of Virginia by reason of its' authority to decline to reappoint at the expiration of their term. This difference in oversight constitutes unequal protection of the law.

AUTHORITIES

This is a case of first impression. Petitioner relies solely on the Fourteenth Amendment to the Constitution of the United States which states:

> **...; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

CONCLUSION

The gravamen of Petitioners complaint is the action of lawyer Kenneth B. Murov acting in concert with retired Judge Designate James C. Godwin. After an appeal of the final decree of divorce was rejected by the Court of Appeals of Virginia a Memorandum of *Lis Pendens* was filed. Despite this and after the death of Petitioner's wife the following has occurred:

1. The marital residence was:

A. Sold to John A. Munick, Jr. and Dian C. Munick and financed by a VA loan of $225,000 with Centura Bank of Rocky Mount, N.C.

B. Assessed at $113,700 the marital residence was demolished and used as backfill for a bulkhead built along Fisher Creek.

C. Replaced by a dwelling assessed at $409,400 now occupied by Alan and Beverly Diamonstein.

2. Real property at 628 Lee Street, Hampton Va. titled "S.B. Davis, Jr. and Louise B. Davis, Trustees of Virginia Real Estate Trust" was sold to Martin R. Lautman who sold to Valerie C. Benn who financed by an FHA loan of $72,853 to B. F. Saul Mortgage Company of Bethesda, Md.

3. Real property at 515 Homestead Avenue, Hampton, Va. titled "Virginia Real Estate Trust" was sold to Martin R. Lautman for $25,000. The property was rented out under the Section 8 housing subsidy and listed for sale by Mulder Realty.

4. Three bearer bonds in the amount of $5,000 each were cashed with the brokerage firm of Legg, Mason, Wood, Walker, Inc.

5. One bond in the amount of $5,000 registered to Petitioner's aunt, Louise D. Haynes and known to have been in the possession of lawyer Kenneth B. Murov is missing.

6. A five carat diamond ring, property of Petitioner's aunt, located at the marital residence when Petitioner was forced to leave by a five unit police team illegally enforcing a court order has been sold. This ring was not listed on the inventory of Petitioner's wife's estate.

The above demonstrates the injustices that can be caused by a judge not subject to even the minimal restraint of not being reappointed.

_____

Samuel Bunyan Davis, Jr.
Petitioner pro se

Samuel Bunyan Davis, Jr.
Petitioner pro se
437 Winterhaven Drive
Newport News, Virginia 23606

CERTIFICATE OF SERVICE

I certify that on November 1, 2001, the original and nine copies of the foregoing memorandum were mailed to the Clerk of this Court, first class, postage prepaid and that a true and correct copy was mailed, first class, postage prepaid to Kevin O. Barnard,

Assistant Attorney General, Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23219, counsel for James C. Godwin.

Samuel Bunyan Daviss, Jr.
Petitioner Pro Se